

A. Bonfatti & Co., Inc. and Massachusetts Laborers' District Council, a/w Laborers' International Union of North America, AFL-CIO.
Case 1-CA-32435

February 28, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

Pursuant to a charge filed by the Union on December 23, 1994, the General Counsel of the National Labor Relations Board issued a complaint on January 10, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 1-RC-20177. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On January 27, 1995, the General Counsel filed a Motion for Summary Judgment. On January 30, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On February 21, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its contentions in the representation proceeding that the parties' expired Section 8(f) agreement did not constitute a sufficient showing of interest to warrant holding a representation election and that it did not employ any unit employees.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.¹ The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation pro-

¹ We note in this regard that the Respondent failed to request review of the Regional Director's September 29, 1994 Decision and Direction of Election rejecting the Respondent's contentions in the representation proceeding. In these circumstances, the Respondent is precluded under Sec. 102.67(f) of the Board's Rules from raising the same issues in the instant proceeding. See *Pony Express Courier Corp.*, 311 NLRB 1157 fn. 1 (1993), and cases cited there. See also *NLRB v. Louisiana Industries*, 414 F.2d 227, 228 (5th Cir. 1969).

ceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Norwood, Massachusetts, has been engaged in business as a general contractor in the construction industry. During the calendar year ending December 31, 1994, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 for enterprises within the Commonwealth of Massachusetts which are directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held October 26, 1994, the Union was certified on November 9, 1994, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All laborers employed by Respondent in the towns of North Orange and Warwick in Franklin County, and in the counties of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worcester in the Commonwealth of Massachusetts, and in the town of Salem in Rockingham County, New Hampshire, but excluding all other employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About November 1 and 21 and December 7, 1994, the Union requested the Respondent to meet and bargain and, since about November 1, 1994, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after November 1, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate

unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, A. Bonfatti & Co., Inc., Norwood, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Massachusetts Laborers' District Council, a/w Laborers' International Union of North America, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All laborers employed by Respondent in the towns of North Orange and Warwick in Franklin County, and in the counties of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worcester in the Commonwealth of Massachusetts, and in the town of Salem in Rockingham County, New Hampshire, but excluding all other employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Norwood, Massachusetts, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 1 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Massachusetts Laborers' District Council, a/w Laborers' International Union of North America, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All laborers employed by us in the towns of North Orange and Warwick in Franklin County, and in the counties of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worcester in the Commonwealth of Massachusetts, and in the town of Salem in Rockingham County, New Hampshire, but excluding all other employees, guards and supervisors as defined in the Act.

A. BONFATTI & CO., INC.